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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MOLLY McGINNIS, et al.,

11 Plaintiffs,

12 v.

13 T-MOBILE USA, INC., a Delaware
14 corporation,

15 Defendant.

No. C08-106Z

ORDER

16 THIS MATTER comes before the Court on the deferred portion of Defendant's
17 Motion for Summary Judgment, docket no. 60. At oral argument on January 15, 2009, the
18 Court took the voluntary payment doctrine issue under advisement. Minutes, docket no. 120.
19 T-Mobile invokes the voluntary payment doctrine as a basis for dismissal of the breach of
20 contract claim¹ of Plaintiffs Hyoun, Katsenelebogen, McGinnis and Ruffin based on these
21 Plaintiffs' failure to contemporaneously protest or investigate the disputed charges. The only
22 bill that T-Mobile submitted in support of its motion is found at Exhibit 4 to the Moore
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25 ¹ The voluntary payment doctrine does not apply to Plaintiffs' Washington CPA claims. Indoor
26 Billboard / Wash., Inc. v. Integra Telecom of Wash., Inc., 162 Wn.2d 59, 86 (2007) ("[T]he
voluntary payment doctrine is inappropriate as an affirmative defense in the CPA context, as a
matter of law.").

1 Declaration, docket no. 63. Plaintiffs submitted two sample bills as Exhibits 6 and 7 to the
2 Giskan Declaration, docket no. 82.

3 “Payments are considered involuntarily made under the doctrine if the payor lacked
4 knowledge of the applicable fees or made the payment as a result of fraud, duress, or
5 compulsion.” Davis v. Homecomings Fin., Case No. C05-1466RSL, 2006 U.S. Dist. LEXIS
6 77331, *11, n.3 (W.D. Wash. 2006); see also Indoor Billboard, 162 Wn.2d at 85 (payor must
7 have “full knowledge of the facts”). T-Mobile’s bills do not clearly indicate to a customer
8 that international roaming charges are being incurred as a result of unanswered calls and calls
9 forwarded to voicemail. T-Mobile assigns a telephone number to such calls, making it
10 appear that a customer actually made a call, which is not true. Moore Decl., Ex. 4 (bill
11 listing telephone number 805-637-7249 in the “number called” column of the bill as the basis
12 for the charge). Furthermore, roaming charges undisputed by Plaintiffs are interspersed with
13 disputed roaming charges on the bill. See id. Because there are material issues of fact as to
14 whether the bills alone put T-Mobile customers on actual or constructive notice of the basis
15 of the charges, the Court can only apply the voluntary payment doctrine for purposes of
16 summary judgment if a customer has received individualized disclosures putting him or her
17 on actual or constructive notice of T-Mobile’s intent to assess international roaming charges
18 for unanswered calls and calls forwarded to voicemail.²

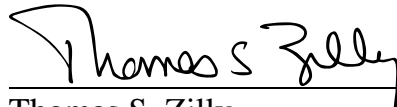
19 Accordingly, the Court GRANTS IN PART and DENIES IN PART T-Mobile’s
20 motion for summary judgment on the voluntary payment doctrine, as follows. The Court
21 GRANTS IN PART the motion as to Hyoun’s breach of contract claim and DISMISSES
22 Hyoun’s contract claim to the extent it was based on charges incurred in February 2007,

24 ² The Court distinguishes Riensch v. Cingular Wireless LLC, Case No. C06-1325TSZ, 2007
25 U.S. Dist. Lexis 83921 (W.D. Wash. Nov. 9, 2007), vacated on other grounds, 320 Fed. Appx.
26 646, 2009 U.S. App. LEXIS 6154 (9th Cir. 2009), on the facts. In Riensch, the Court
concluded, as a matter of law, that the plaintiff’s payment of the “State B and O Surcharge,”
which was set forth as a single line item on the bill, was voluntary and with full knowledge.
2007 U.S. Dist. LEXIS at ** 7, 22.

1 because Hyoun did not dispute those charges contemporaneously with her payment, and she
2 had at least constructive notice of T-Mobile's intent to assess international roaming charges
3 for unanswered calls and calls forwarded to voicemail as a result of the December 28, 2005
4 email from T-Mobile. See Second Suppl. Moore Decl., docket no. 118, Ex. D (email). The
5 Court GRANTS IN PART T-Mobile's motion as to Katsenelebogen's breach of contract
6 claim and DISMISSES Katsenelebogen's contract claim to the extent it was based on
7 roaming charges incurred between September 5, 2007 and October 16, 2007, because
8 Katsenelebogen did not dispute those charges contemporaneously with his payment, and he
9 testified that he had knowledge of T-Mobile's intent to assess such charges by April 2007.
10 Moore Decl., docket no. 63, Ex. 13 (Katsenelebogen Dep.) at 266:5-268:21. The voluntary
11 payment doctrine is an alternative basis for the dismissal of Hyoun's and Katsenelebogen's
12 respective breach of contract claims. See Minutes, docket no. 120. The Court DENIES the
13 motion as to McGinnis and Ruffin because, although the evidence appears to show that they
14 failed to contemporaneously protest the disputed charges with their respective payments, the
15 Court cannot find as a matter of law that they had, or should have had, full knowledge of the
16 facts as a result of T-Mobile's bills.

17 IT IS SO ORDERED.

18 DATED this 20th day of January, 2010.

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21 Thomas S. Zilly
22 United States District Judge
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